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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
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13 L. SEVILLE PARKS,) 3:04-cv-00501-HDM-VPC
14 Plaintiff,)
15 vs.) ORDER
16 DEBRA BROOKS, et al.,)
17 Defendants.)
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19 Following remand by the Court of Appeals, two claims remained
20 to be tried in this action: (1) plaintiff's claim that defendants
21 violated his First Amendment right to free exercise of his religion
22 when they denied him a kosher diet; and (2) plaintiff's claim that
23 the prison regulation used to deny him kosher meals violates the
24 Religious Land Use and Institutionalized Persons Act ("RLUIPA").
25 After the plaintiff declined to present any evidence to support his
26 claims at trial, the court dismissed this action with prejudice.
27 As additional grounds for dismissing the RLUIPA claim, the court
28 finds and concludes as follows.

1 RLUIPA provides that "[n]o government shall impose or
2 implement a land use regulation in a manner that imposes a
3 substantial burden on the religious exercise of a person residing
4 in or confined to an institution . . . even if the burden results
5 from a rule of general applicability, unless the government
6 demonstrates that imposition of the burden on that person - (1) is
7 in furtherance of a compelling governmental interest; and (2) is
8 the least restrictive means of furthering that compelling
9 governmental interest." 42 U.S.C. § 2000cc-1(a). RLUIPA also
10 states that prisoners may obtain "appropriate relief" against a
11 government. 42 U.S.C. § 2000cc-2(a).

12 Plaintiff has sued all defendants in both their individual and
13 official capacities. He seeks monetary damages and injunctive
14 relief.¹ As plaintiff is no longer in custody, his claims for
15 injunctive relief are moot. The question then is whether
16 "appropriate relief" under RLUIPA includes monetary damages against
17 defendants in either their individual or official capacities.

18 The Ninth Circuit has recently held that RLUIPA does not
19 authorize monetary damages against defendants in their official
20 capacities. *Holley v. Cal. Dep't of Corrections*, 599 F.3d 1108,
21 1112 (9th Cir. 2010). Thus, plaintiff cannot recover monetary
22 damages against defendants in their official capacities for the
23 alleged RLUIPA violation.

24 The Ninth Circuit has not yet decided whether RLUIPA
25 authorizes money damages against state actors in their *individual*
26 capacities. See *Shilling v. Crawford*, 2010 WL 1735039, at *2 (9th

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28 ¹ Plaintiff's complaints do not seek declaratory relief. (See Pl.
Compl. dated July 16, 2004, at 23; Pl. Compl. dated Apr. 5, 2004, at 15).

1 Cir. Apr. 28, 2010). However, the circuit courts that have
2 directly addressed the issue have held that it does not. *Smith v.*
3 *Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007); *Sossamon v. Lone Star*
4 *State of Texas*, 560 F.3d 316, 327-29 (5th Cir. 2009); *Rendelman v.*
5 *Rouse*, 569 F.3d 182, 184 (4th Cir. 2009); *Nelson v. Miller*, 570
6 F.3d 868, 885-89 (7th Cir. 2009). Several district courts in this
7 circuit have reached the same conclusion. See, e.g., *Sokolsky v.*
8 *Voss*, 2010 WL 2991522, at *4 (E.D. Cal. July 28, 2010); *Alvarez v.*
9 *Hill*, 2010 WL 582217, at *12 (D. Or. Feb. 12, 2010); *Harris v.*
10 *Schriro*, 652 F. Supp. 2d 1024, 1030 (D. Ariz. 2009). The courts
11 reasoned that because RLUIPA was enacted pursuant to Congress's
12 Spending Clause power, it "cannot be construed as creating a
13 private action against individual defendants for monetary
14 damages."² *Smith*, 502 F.3d at 1275.

15 The Ninth Circuit has held RLUIPA is constitutional under the
16 Spending Clause. See *Mayweathers v. Newland*, 314 F.3d 1062,
17 1066-67 (9th Cir. 2002). While RLUIPA purports to have Commerce
18 Clause underpinnings, the Seventh Circuit has held that it is
19 appropriate to interpret RLUIPA as an exercise of the Spending
20 Clause power where there is no evidence that the "denial of a
21 religious diet affected commerce with foreign nations, among the
22 several States, or with Indian tribes." *Nelson*, 570 F.3d at 886

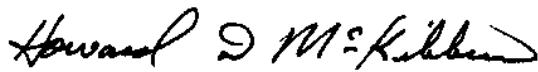
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24 ² Spending Clause legislation operates like a contract. *Harris*, 652
25 F. Supp. 2d at 1029 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451
26 U.S. 1, 17 (1981)). Individual state actors are not parties to the contract
27 in their individual capacities. See *Sossamon*, 560 F.3d at 329
28 ("Congressional enactments pursuant to the Spending Clause do not themselves
impose direct liability on a non-party to the contract between the state and
federal government."). "Construing RLUIPA to provide for damages actions
against officials in their individual capacities would raise serious
questions regarding whether Congress had exceeded its authority under the
Spending Clause." *Nelson*, 570 F.3d at 889.

1 (internal punctuation and alterations omitted); see also *Smith*, 502
2 F.3d at 1274 n.9. As in *Nelson*, there is no evidence here that
3 denying plaintiff a kosher diet affected interstate commerce. The
4 court therefore interprets RLUIPA as an exercise of Congress's
5 Spending Clause power and concludes that plaintiff cannot obtain
6 monetary relief against the defendants in their individual
7 capacities for the alleged RLUIPA violation.

8 Accordingly, as plaintiff's claim for injunctive relief is
9 moot, and RLUIPA does not authorize recovery of monetary damages
10 against the defendants in either their individual or official
11 capacities, plaintiff's RLUIPA claim is hereby dismissed.

12 IT IS SO ORDERED.

13 DATED: This 15th day of December, 2010.

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15 UNITED STATES DISTRICT JUDGE
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